

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IAN S. PHILLIPS
58 Otter Cove Drive
Old Saybrook, CT 06475

Plaintiff

v.

MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED
4 World Financial Center
New York, NY 10271

Defendant

CIVIL ACTION NO. 05-742

WAIVER OF SERVICE OF SUMMONS

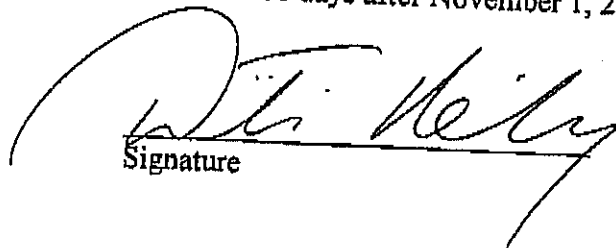
To: Marc H. Snyder, Esq.
Frank, Rosen, Snyder & Moss, LLP
1813 Marsh Road, Suite D
Wilmington, DE 19810
(302) 475-8060

We acknowledge receipt of your request pursuant to FED. R. CIV. P. 4(d) that we waive service of a summons upon our client Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") in the action of **IAN S. PHILLIPS v. MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED** which is case number 05-742 in the United States District Court of Delaware. We have also received a copy of the complaint in the action, two copies of this instrument, and a means by which to return the signed waiver to you without cost to MLPF&S.

We agree to save the cost of service of a summons and an additional copy of the Complaint in this lawsuit by not requiring that MLPF&S be served with judicial process in the manner provided by FED. R. CIV. P. 4.

MLPF&S will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court.

We understand that a judgement may be entered against MLPF&S if an answer or motion under FED. R. CIV. P. 12 is not served upon you within 60 days after November 1, 2005.



Signature

*Dimitri Nemirovsky
Bingham McCutchen LLP
As Attorneys for and on behalf of
Merrill Lynch, Pierce, Fenner & Smith
Incorporated*